

Nos. 12-144, 12-307

In the Supreme Court of the United States

DENNIS HOLLINGSWORTH, ET AL.,
Petitioners,

v.

KRISTIN M. PERRY, ET AL.,
Respondents.

UNITED STATES,
Petitioner,

v.

EDITH SCHLAIN WINDSOR, IN HER CAPACITY AS
EXECUTOR OF THE ESTATE OF THEA CLARA SPYER,
AND BIPARTISAN LEGAL ADVISORY GROUP OF
THE UNITED STATES HOUSE OF REPRESENTATIVES,
Respondents.

*On Writs of Certiorari to the United States
Courts of Appeals for the Ninth and Second Circuits*

BRIEF OF *AMICUS CURIAE* AMERICAN SOCIOLOGICAL
ASSOCIATION IN SUPPORT OF RESPONDENT KRISTIN M.
PERRY AND RESPONDENT EDITH SCHLAIN WINDSOR

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INTEREST OF *AMICUS CURIAE*¹

The American Sociological Association (“ASA”) is the national professional and scholarly association of sociologists in the United States. Founded in 1905, the ASA has more than 14,000 members, including most sociologists holding doctoral degrees from accredited universities. The ASA publishes nine leading peer-reviewed journals. The ASA is committed to and bound by the highest standards of research methodology and objectivity and is dedicated to advancing sociology as a scientific discipline and profession that serves the public good.

The ASA has a long history of presenting the consensus research findings of social scientists to American courts for their use in evaluating evidence and legal issues, and its conclusions are regularly relied on by courts. As part of that mission, the ASA submits this brief to present to the Court the consensus view of social scientists on certain issues raised in these cases—namely, the effects of same-sex parenting on the wellbeing of children.

¹ Counsel for each party has consented to the filing of this Brief, as indicated by letters filed with the Clerk of the Court. Pursuant to Rule 37.6, *amicus curiae* state that no counsel for a party authored any part of this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

In their briefs to the Court, the Bipartisan Legal Advisory Group of the U.S. House of Representatives (“BLAG”), the Hollingsworth Petitioners (the “Proposition 8 Proponents”), and their respective *amici* assert that children fare better with opposite-sex parents² than with same-sex parents. They contend that this alleged fact justifies both the Defense of Marriage Act (“DOMA”), which denies federal recognition to legally married same-sex couples, and Proposition 8’s revocation of marriage rights for same-sex couples in California. For instance, BLAG argues that “biological differentiation in the roles of mothers and fathers makes it rational³ to encourage situations in which children have one of each.” Brief for Respondent BLAG at 48, *United States v. Windsor*, No. 12-307 (U.S. Jan. 22, 2013). BLAG further contends that “[b]iological parents have a genetic stake in the success of their children” that others, such as adoptive parents and same-sex parents, do not have. *Id.* at 47. The Proposition 8 Proponents advance similar arguments. *See* Brief for Petitioner Hollingsworth at

² In order to be consistent with prior court decisions and the terms utilized by the parties in the courts below, we refer to male-female parents as “opposite-sex” parents throughout this brief.

³ The parties dispute the appropriate level of scrutiny. However, even assuming that the lowest level of scrutiny applies, the asserted interest in children’s wellbeing cannot be accepted as a rationale for DOMA or Proposition 8. When legislative classifications bear no rational relationship to legitimate government interests, those classifications violate the equal protection clause of both the Fifth and Fourteenth Amendments. *Romer v. Evans*, 517 U.S. 620, 631 (1996).

52-53, *Hollingsworth v. Perry*, No. 12-144 (U.S. Jan. 22, 2013).

However, the claim that same-sex parents produce less positive child outcomes than opposite-sex parents—either because such families lack both a male and female parent or because both parents are not the biological parents of their children—contradicts abundant social science research. Decades of methodologically sound social science research, especially multiple nationally representative studies and the expert evidence introduced in the district courts below, confirm that positive child wellbeing is the product of stability in the relationship between the two parents, stability in the relationship between the parents and child, and greater parental socioeconomic resources. Whether a child is raised by same-sex or opposite-sex parents has no bearing on a child’s wellbeing.

The clear and consistent consensus in the social science profession is that across a wide range of indicators, children fare just as well when they are raised by same-sex parents when compared to children raised by opposite-sex parents. The social science studies cited by BLAG, Proposition 8 Proponents, and their *amici* to support their arguments fail to address same-sex parents at all. Accordingly, as a matter of science, these studies cannot serve as the basis for conclusions about same-sex parents and related child outcomes and do not undermine the social science consensus that children fare just as well with same-sex parents. To the extent some of the studies cited by BLAG and the Proposition 8 Proponents show that stability improves child outcomes, they confirm that

marriage rights for same-sex couples and the federal recognition of such marriages are likely to improve the wellbeing of children of same-sex parents by providing enhanced family stability. The research presented in this brief articulates these points in greater detail, and demonstrates that the government's interest in promoting the wellbeing of children is neither substantially nor rationally connected to DOMA or Proposition 8, because the overwhelming scientific evidence shows clearly that same-sex couples are equally capable of generating positive child outcomes.⁴

⁴ As explained by Respondent Edith Schlain Windsor and acknowledged by the district court in the *Windsor* case, DOMA in no way affects whether children will be raised by same-sex or opposite-sex parents. It does not encourage gay and lesbian individuals to enter into opposite-sex marriages or deter such individuals from having children within same-sex relationships. Additionally, DOMA in no way impacts heterosexual couples' decisions regarding marriage: "We agree that promotion of procreation can be an important government objective. But we do not see how DOMA is substantially related to it." *Windsor v. United States*, 699 F.3d 169, 188 (2d Cir. 2012), *cert. granted*, 81 U.S.L.W. 3072 (U.S. Dec. 7, 2012). *See also Windsor v. United States*, 833 F. Supp. 2d 394, 404 (S.D.N.Y. 2012), *aff'd*, 699 F.3d 169 (2d Cir. 2012), *cert. granted*, 81 U.S.L.W. 3072 (U.S. Dec. 7, 2012) ("DOMA has no direct impact on heterosexual couples at all; therefore, its ability to deter those couples from having children outside of marriage, or to incentivize couples that are pregnant to get married, is remote, at best."). Similarly, as the United States Court of Appeals for the Ninth Circuit noted in *Perry*, taking away the right to marry from same-sex couples has "no effect on the rights of same-sex couples to raise children or on the procreative practices of other couples." *Perry v. Brown*, 671 F.3d 1052, 1063 (9th Cir. 2012), *cert. granted*, 133 S. Ct. 786 (U.S. 2012).

This Court has long relied on social science research to inform its decisions. For example, in *Roper v. Simmons*, the Court relied on social science research showing that “juveniles have less control, or less experience with control, over their own environment” and that “[t]he personality traits of juveniles are more transitory, less fixed” to support its conclusion that capital punishment for crimes committed while a minor is unconstitutional. 543 U.S. 551, 569-70 (2005); see also *Atkins v. Virginia*, 536 U.S. 304, 318 (2002) (noting that “[t]here is no evidence that [mentally retarded individuals] are more likely to engage in criminal conduct than others” and holding, in part based on the social science evidence and “germane expertise” of *amicus curiae*, that executing mentally retarded individuals violates the Eighth Amendment); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 255-56 (1989) (relying in part on the testimony of a social psychologist to conclude that the employer of a female worker engaged in sex stereotyping). BLAG and the Proposition 8 Proponents offer no facts to support the contention that Congress and the State of California possessed an important or rational basis for DOMA and Proposition 8. In this instance, when the social science evidence is exhaustively examined—which the ASA has done—the facts demonstrate that children fare just as well when raised by same-sex parents. Unsubstantiated fears regarding same-sex child rearing do not overcome these facts and do not justify upholding DOMA and Proposition 8.

ARGUMENT**I. SCHOLARLY CONSENSUS IS CLEAR:
CHILDREN OF SAME-SEX PARENTS FARE
JUST AS WELL AS CHILDREN OF
OPPOSITE-SEX PARENTS**

Contrary to the assertions of BLAG, the Proposition 8 Proponents, and their *amici*, the social science consensus is clear: children raised by same-sex parents fare just as well as children raised by opposite-sex parents. Numerous nationally representative, credible, and methodologically sound social science studies form the basis of this consensus. These studies reveal that children raised by same-sex parents fare just as well as children raised by opposite-sex couples across a wide spectrum of child-wellbeing measures: academic performance, cognitive development, social development, psychological health, early sexual activity, and substance abuse. Moreover, these studies are supported by and consistent with the evidence introduced into the records below and accepted by the district court in *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010). This evidence includes the research of Dr. Michael Lamb, an expert in child social and psychological development who has conducted extensive reviews of twenty-five years worth of research on the wellbeing of children of same-sex parents. *See, e.g.,* Michael Lamb, *Mothers, Fathers, Families, and Circumstances: Factors Affecting*

Children's Adjustment, 16 *Applied Developmental Science* 98, 104 (2012).⁵

Academic Performance and Cognitive Development

Social science research confirms that the academic performance of children raised by same-sex parents is indistinguishable from that of children raised by opposite-sex parents. A leading study by Daniel Potter based on nationally representative, longitudinal data found no significant difference in academic achievement between children of same-sex parents and children of opposite-sex parents. See Daniel Potter, *Same-Sex Parent Families and Children's Academic Achievement*, 74 *Journal of Marriage & Family* 556 (2012). Similarly, another leading 2009 study by sociologists Alicia Fedewa and Teresa Clark employing nationally representative data that examined the academic achievement of first-grade children reported

⁵ During the *Perry v. Schwarzenegger* trial, the Proposition 8 Proponents “eschew[ed] all but a rather limited factual presentation,” and “presented only one witness, David Blankenhorn”—who is not a social scientist—“to address the government interest in marriage.” 704 F. Supp. 2d at 931. The district court concluded that this sole witness “provided no credible evidence to support any of the claimed adverse effects proponents promised to demonstrate.” *Id.* Since the trial, Blankenhorn has abandoned his former position regarding marriage rights for same-sex couples. See David Blankenhorn, *How My View on Gay Marriage Changed*, *N.Y. Times*, June 22, 2012. As Blankenhorn recently explained, it is time to “build new coalitions bringing together gays who want to strengthen marriage with straight people who want to do the same.” Mark Oppenheimer, *In Shift, an Activist Enlists Same-Sex Couples in a Pro-Marriage Coalition*, *N.Y. Times*, Jan. 29, 2013.

no significant differences in academic achievement between children raised by same-sex and opposite-sex parents. See Alicia L. Fedewa & Teresa P. Clark, *Parent Practices and Home-School Partnerships: A Differential Effect for Children with Same-Sex Coupled Parents?*, 5 *Journal of GLBT Family Studies* 312 (2009); see also Michael J. Rosenfeld, *Nontraditional Families and Childhood Progress Through School*, 47 *Demography* 755 (2010) (demonstrating that children of residentially stable same-sex parents are as likely to make normal progress through school as children from stable opposite-sex married parents); Douglas W. Allen et al., *Nontraditional Families and Childhood Progress Through School: A Comment on Rosenfeld*, *Demography* (Nov. 2012), <http://link.springer.com/article/10.1007/s13524-012-0169-x/fulltext.html> (confirming similar results of academic performance when comparing children of residentially stable same-sex parents with children of stable opposite-sex married parents).⁶ The same pattern holds true among

⁶ The *amici* of BLAG and the Proposition 8 Proponents rely upon this study by Douglas Allen. Allen re-works data used by Rosenfeld, but ignores stability as a control factor, and as a result finds a difference in academic achievement. However, as Rosenfeld himself responds, and as demonstrated by the social science consensus, stability is the principal factor influencing child outcomes. By removing the control element for stability, Allen cannot discern children's family history. Allen's work thereby conceals that many children in same-sex parent families come from orphanages, foster families, or heterosexual parents who break up, influencing the results but not reflecting on the quality of same-sex parents. When stability is included as a control element, Allen's study confirms that same-sex parents have no negative impact on

older children. For example, in another nationally representative study, social scientists found similar GPA levels among adolescents living with same-sex and opposite-sex parents. See Jennifer L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, 75 *Child Development* 1886 (2004).

Research also reveals similar cognitive development between children raised by same-sex parents and opposite-sex parents. See Justin A. Lavner et al., *Can Gay and Lesbian Parents Promote Healthy Development in High-Risk Children Adopted from Foster Care?*, 82 *American Journal of Orthopsychiatry* 465 (2012). In fact, another study of children with same-sex parents reveals that they score at least as well—and sometimes better than—children of opposite-sex parents on numerous indicators of educational achievement and involvement. See Joseph G. Kosciw & Elizabeth M. Diaz, *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual, and Transgender Parents and Their Children in Our Nation's K-12 Schools*, Gay, Lesbian and Straight Education Network (2008).

Social Development

The social development of children raised by same-sex parents is equivalent to that of children raised by opposite-sex parents. Analysis of nationally

academic outcomes of children. See Michael J. Rosenfeld, *Reply to Allen et al.*, *Demography* (Nov. 2012), <http://link.springer.com/article/10.1007%2Fs13524-012-0170-4>.

representative data reveals no differences in social adjustment depending on whether children were raised by same-sex or opposite-sex parents. *See* Fedewa & Clark at 312. Nationally representative studies of adolescents find that the number, support, and quality of peer relationships and friendships are similar for teens raised by female same-sex couples and those raised by opposite-sex parents. *See* Jennifer L. Wainright & Charlotte J. Patterson, *Peer Relations Among Adolescents with Female Same-Sex Parents*, 44 *Developmental Psychology* 117 (2008); *see also* Fiona Tasker, *Lesbian Mothers, Gay Fathers and Their Children: A Review*, 26 *Developmental and Behavioral Pediatrics* 224 (2005) (finding children of same-sex parents exhibited the same typical adjustments related to peer relations as children of opposite-sex parents and therefore could not be said to fare worse based on their parents' sexuality).

Mental Health

Social science studies also confirm that children of same-sex parents are just as psychologically healthy as children of opposite-sex parents. According to a nationally representative study, adolescents raised by same-sex and opposite-sex parents report similar levels of self-esteem and depression. *See* Wainright et al. at 1886. Other reliable studies corroborate these results. *See* Loes van Gelderen et al., *Quality of Life of Adolescents Raised from Birth by Lesbian Mothers: The US National Longitudinal Family Study*, 33 *Journal of Developmental & Behavioral Pediatrics* 1, 1 (2012) (concluding that “[a]dolescent offspring in planned lesbian families do not show differences in [quality of life] when compared with a matched group of

adolescents reared in heterosexual families”). As Dr. Lamb outlined in his comprehensive literature review of the social science evidence, “numerous studies of children and adolescents raised by same-sex parents conducted over the past 25 years by respected researchers and published in peer-reviewed academic journals conclude that they are as successful psychologically, emotionally, and socially as children and adolescents raised by heterosexual parents.” Lamb at 104. Similarly, surveys reveal no greater levels of anxiety or Attention Deficit Disorder (A.D.D.) among teenagers raised by same-sex parents than among those raised by opposite-sex parents. *See* Nanette Gartrell & Henny W. Bos, *US National Longitudinal Lesbian Family Study: Psychological Adjustment of 17-Year-Old Adolescents*, 126 *Pediatrics* 28 (2010).⁷

This social science evidence confirms the evidence presented at the trial and accepted by the district court in *Perry*. For example, based in part on the testimony of Dr. Lamb that social science studies demonstrate “very conclusively that children who are raised by gay and lesbian parents are just as likely to be well-adjusted as children raised by heterosexual parents,” the district court found as a matter of fact that:

⁷ *See also* Rachel H. Farr et al., *Parenting and Child Development in Adoptive Families: Does Parental Sexual Orientation Matter?*, 14 *Applied Developmental Science* 164 (2010); Scott Ryan, *Parent-Child Interaction Styles between Gay and Lesbian Parents and Their Adopted Children*, 3 *Journal of GLBT Family Studies* 105 (2007); Stephen Erich et al., *A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children*, 1 *Journal of GLBT Family Studies* 43 (2005) (all reporting similar findings).

[t]he gender of a child's parent is not a factor in a child's adjustment. The sexual orientation of an individual does not determine whether that individual can be a good parent. Children raised by gay or lesbian parents are as likely as children raised by heterosexual parents to be healthy, successful and well-adjusted. The research supporting this conclusion is accepted beyond serious debate in the field of developmental psychology.

Perry v. Schwarzenegger, 704 F. Supp. 2d at 980.

Early Sexual Activity

The social science studies also demonstrate that teenagers raised by same-sex parents and those raised by opposite-sex parents engage in similar levels of teenage sexual activity. For instance, nationally representative studies show that similar proportions of teenagers raised by same-sex parents and by opposite-sex parents have had sexual intercourse or a romantic relationship. See Charlotte J. Patterson & Jennifer L. Wainright, *Adolescents with Same-Sex Parents: Findings from the National Longitudinal Study of Adolescent Health*, in *Adoption by Lesbians and Gay Men: A New Dimension in Family Diversity* (David M. Brodzinsky & Adam Pertman eds., 2012). In fact, sexual behaviors reported by 17-year-olds raised by same-sex mothers indicated that the age at which they first engage in sexual intercourse was slightly older than those in a gender- and age-matched national sample of children raised by opposite-sex parents. See Nanette Gartrell et al., *New Trends in Same-Sex Sexual Contact for American Adolescents*, 41 *Archives*

of Sexual Behavior 5 (2012). Moreover, the odds of having a sexually transmitted disease, becoming pregnant, or impregnating someone were statistically similar. *Id.* And none of the children raised by same-sex parents examined in the National Longitudinal Lesbian Family Study reported any physical or sexual abuse by a parent or caregiver. See Nanette Gartrell et al., *Adolescents of the U.S. National Longitudinal Lesbian Family Study: Sexual Orientation, Sexual Behavior, and Sexual Risk Exposure*, 40 Archives of Sexual Behavior 1199 (2011).

Substance Abuse and Behavioral Problems

Finally, social science studies confirm that children of same-sex parents are no more likely to abuse substances than children of opposite-sex parents. A nationally representative sample of adolescents living with female, same-sex parents reveals that the adolescents are similar to their counterparts raised by opposite-sex parents in terms of frequency of substance use (*i.e.*, tobacco, alcohol, and marijuana), problems with substance use, and delinquent behavior. See Jennifer L. Wainright & Charlotte J. Patterson, *Delinquency, Victimization, and Substance Use Among Adolescents with Female Same-Sex Parents*, 20 Journal of Family Psychology 526 (2006). Furthermore, children of opposite-sex and same-sex parents report similar levels of problematic, rule-breaking, and inappropriately aggressive behaviors. See Gartrell & Bos.

In sum, as the overwhelming body of social science research confirms, whether a child is raised by same-sex or opposite-sex parents has no bearing on a child's

wellbeing.⁸ Instead, the consensus is that the key factors affecting child wellbeing are stable family environments and greater parental socioeconomic resources, neither of which is related to the sex or sexual orientation of a child's parents. See Rand D. Conger et al., *Socioeconomic Status, Family Processes, and Individual Development*, 72 *Journal of Marriage & Family* 685 (2010). As the district court in *Perry* concluded based on the testimony of Dr. Lamb and other social science evidence presented, “[t]he factors that affect whether a child is well-adjusted are: (1) the quality of a child’s relationship with his or her parents; (2) the quality of the relationship between a child’s parents or significant adults in the child’s life; and (3) the availability of economic and social resources.” 704 F. Supp. 2d at 980. These factors indicate that in order to further enhance child outcomes and wellbeing, we should encourage stable and financially secure family units—including same-sex parented families—rather than exclude the hundreds of thousands of children living with same-sex couples from the stability and economic security that marriage provides.

⁸ Notwithstanding certain critics’ blanket dismissal of some of the studies underlying the social science research consensus, see, e.g., Brief for Social Science Professors as *Amicus Curiae* Supporting Petitioner–Hollingsworth, No. 12-144, and Respondent–BLAG, No. 12-307 at 13-21 (U.S. Jan. 29, 2013), the ASA’s review of the studies confirms that they are methodologically sound and conform to the highest standards of sociological research.

II. THE RESEARCH CLAIMED TO UNDERMINE THE CONSENSUS EITHER DOES NOT ADDRESS SAME-SEX PARENTS AND THEIR CHILDREN OR IS MISCHARACTERIZED

The studies relied on by BLAG, the Proposition 8 Proponents, and their *amici* fail to support their claim that children fare better with opposite-sex parents than same-sex parents, because nearly all of the studies fail to examine same-sex parents or their children. One of the *amici* supporting BLAG and the Proposition 8 Proponents in the circuit courts conceded the importance of apples-to-apples comparisons and dismissed studies that rely on “inappropriate comparisons (i.e., comparing children raised by same-sex couples to children raised by divorced mothers).” Brief for American College of Pediatricians as *Amicus Curiae* Supporting Intervenor–Defendant–Appellant at 4-5, *Windsor v. United States*, 699 F.3d. 169 (2d Cir. 2012). This critique of “inappropriate comparisons” is even truer when the studies do not address same-sex parents at all. Moreover, some of the findings in the studies are mischaracterized by the *amici* supporting BLAG and the Proposition 8 Proponents and, in fact, affirm that family stability and greater parental socioeconomic resources are the principal factors affecting child wellbeing.

In an effort to undermine the social science consensus, several *amici* rely heavily on one study conducted by Mark Regnerus. See Mark Regnerus, *How Different Are the Adult Children of Parents Who Have Same-Sex Relationships? Findings from the New Family Structures Survey*, 41 *Social Science Research* 752 (2012) (“Regnerus 2012a”). Critically, for multiple

reasons and as Regnerus acknowledges, his study did not examine, and provides no conclusions regarding, the wellbeing of children who lived with and were raised by same-sex parents.

A) THE REGNERUS STUDY DOES NOT SUPPORT CONCLUSIONS REGARDING THE IMPACT OF BEING RAISED BY SAME-SEX PARENTS

The Regnerus study—the principal study relied on by the *amici* of BLAG and the Proposition 8 Proponents—did not specifically examine children raised by same-sex parents, and provides no support for the conclusions that same-sex parents are inferior parents or that the children of same-sex parents experience worse outcomes.

The Regnerus Study Offers No Basis for Conclusions About Same-Sex Parents

First, the Regnerus study does not specifically examine children born or adopted into same-sex parent families, but instead examines children who, from the time they were born until they were 18 or moved out, had a parent who at any time had “a same-sex romantic relationship.” Regnerus 2012a at 752. As Regnerus noted, the majority of the individuals characterized by him as children of “lesbian mothers” and “gay fathers” were the offspring of failed opposite-sex unions whose parent subsequently had a same-sex relationship. *Id.* In other words, Regnerus did not study or analyze the children of two same-sex parents.

Second, when the Regnerus study compared the children of parents who at one point had a “same-sex romantic relationship,” most of whom had experienced a family dissolution or single motherhood, to children raised by two biological, married opposite-sex parents, the study stripped away all divorced, single, and stepparent families from the opposite-sex group, leaving only stable, married, opposite-sex families as the comparison. *Id.* at 757 (the comparison group consisted of individuals who “[l]ived in intact biological famil[ies] (with mother and father) from 0 to 18, and parents are still married at present”). Thus, it was hardly surprising that the opposite-sex group had better outcomes given that stability is a key predictor of positive child wellbeing. By so doing, the Regnerus study makes inappropriate apples-to-oranges comparisons.

Third, Regnerus’s first published analysis of his research data failed to consider whether the children lived with, or were raised by, the parent who was, at some point, apparently involved in “a romantic relationship with someone of the same sex” and that same-sex partner. *Id.* at 756. Instead, Regnerus categorized children as raised by a parent in a same-sex romantic relationship regardless of whether they were in fact raised by the parent and the parent’s same-sex romantic partner and regardless of the amount of time that they spent under the parent’s care.⁹ As a result, so long as an adult child believed

⁹ Although the data used by Regnerus distinguished between children who had lived with their parent while the parent was in a same-sex romantic relationship and children who had not,

that he or she had *had* a parent who had a relationship with someone of the same sex, then he or she was counted by Regnerus as having been “raised by” a parent in a same-sex relationship.¹⁰

Fourth, in contrast to every other study on same-sex parenting, Regnerus identified parents who had purportedly engaged in a same-sex romantic relationship based solely on the child’s own retrospective report of the parent’s romantic relationships, made once the child was an adult. This unusual measurement strategy ignored the fact that the child may have limited and inaccurate recollections of the parents’ distant romantic past. *Id.*

Finally, the study fails to account for the fact that the negative outcomes may have been caused by other childhood events or events later in the individual’s

Regnerus 2012a at 757, Regnerus classified children in his study and defined them as being raised by “Lesbian Mothers” and “Gay Fathers” without regard to those differences. *Id.* at 756-57 (noting that 73 total children responded as having a father in a same-sex relationship and including all 73 in his analysis, notwithstanding that only 42% of the respondents reported living with the father while he was in a same-sex romantic relationship, and only 23% percent reported living with him and his partner for at least 4 months). Regnerus notes that he classified children as being raised by “Lesbian Mothers” and “Gay Fathers” “regardless of any other household transition.” *Id.* at 757.

¹⁰ Indeed, the Regnerus study described itself as “a study of young adults rather than children or adolescents, with particular attention paid to reaching ample numbers of respondents who were raised by parents that had a same-sex relationship.” *Id.* at 755.

adult life, particularly given that the vast majority (thirty-seven of forty) of the outcomes measured were adult and not childhood outcomes.¹¹ Factors other than same-sex parenting are likely to explain these negative outcomes in the Regnerus study. Regnerus himself concludes that “I am thus not suggesting that growing up with a lesbian mother or gay father causes suboptimal outcomes *because of* the sexual orientation or sexual behavior of the parent.” *Id.* at 766.

In sum, by conflating (1) children raised by same-sex parents with (2) individuals who reportedly had a parent who had “a romantic relationship with someone of the same sex,” and referring to such individuals as children of “lesbian mothers” or “gay fathers,” the Regnerus study obscures the fact that it did not specifically examine children raised by two same-sex parents. Accordingly, it cannot speak to the impact of same-sex parenting on child outcomes. As discussed above, *amici* in support of BLAG and the Proposition 8 Proponents have themselves rejected such “inappropriate comparisons” between stable and unstable family structures, *see* Brief for American College of Pediatricians at 4-5, as did the district court in *Perry*, *see* 704 F.Supp. 2d at 981 (studies that make apples-to-oranges comparisons are of no moment).

¹¹ Regnerus himself recognizes that the survey data he relied upon—the New Family Structures Study (NFSS)—“is poised to address [questions] about the lives of young adults between the ages of 18 and 39, but not about children or adolescents.” Regnerus 2012a at 755.

The “Re-Stated” Regnerus Study Offers No Basis for Conclusions About Same-Sex Parents

Regnerus acknowledged the merit of a series of scholarly critiques regarding underlying aspects of his research and subsequently published a second analysis of the data. Among others, a group of over one hundred social scientists signed an article faulting the Regnerus study for failing to take account of family structure and family instability. Gary J. Gates et al., *Letter to the Editor and Advisory Editors of Social Science Research*, 41 *Social Science Research* 1350 (2012). The article specifically criticized the Regnerus study’s failure to “distinguish between the impact of having a parent who has a continuous same-sex relationship from the impact of having same-sex parents who broke-up from the impact of living in a same sex stepfamily from the impact of living with a single parent who may have dated a same-sex partner.” *Id.* Regnerus tried to remedy the fact that his initial published research did not analyze whether the children had actually lived with the parent who, according to the adult child, had at some point, been “romantically involved” with someone of the same sex. See Mark Regnerus, *Parental Same-Sex Relationships, Family Instability, and Subsequent Life Outcomes for Adult Children: Answering Critics of the New Family Structures Study with Additional Analyses*, 41 *Social Science Research* 1367, 1369 (2012) (“Regnerus 2012b”).

Nevertheless, Regnerus’s follow-up analysis does not resolve the problems inherent in his initial analysis and contains many of the same shortcomings. The follow-up analysis maintained the flawed and extremely broad definition of what constitutes “lesbian

mothers” and “gay fathers”—a mother or father who ever had a romantic relationship with someone of the same-sex during the period from the birth of the child until the child turned eighteen (or left home to be on their own). *Id.* at 1368. Accordingly, Regnerus’s analysis continues to ignore stability as a factor in child outcomes—a factor that explains many of the differences among its subjects. And Regnerus still fails to account for the duration of time spent with a mother who was “romantically involved” with a same-sex partner and that partner. *See id.* at 1372. Only *two* of the eighty-five children who at some point lived with a mother who was “romantically involved” with another woman reported that they did so for the entire duration of their childhood. Finally, Regnerus’s follow-up analysis is still not reflective of same-sex parenting because Regnerus could not remedy the fact that he recorded experiences that occurred either during the time the child lived with his or her mothers’ same-sex partner *or* during another childhood time period.

If any conclusion can be reached from Regnerus’s study, it is that family stability is predictive of child wellbeing. As Regnerus himself notes, family structure (for instance whether the family has a single parent or two parents), matters significantly to child outcomes. Regnerus 2012a at 761. As the social science consensus described in Part I demonstrates, the evidence regarding children raised by same-sex parents overwhelmingly indicates that children raised by such families fare just as well as children raised by opposite-sex parents, and that children raised by same-sex parents are likely to benefit from the enhanced stability the institution of marriage would provide to their parents and families. All told, the Regnerus

study, even as revised, does not undermine the consensus that children raised by same-sex parents fare just as well as those raised by opposite-sex parents.

B) THE REMAINING STUDIES CITED BY BLAG, THE PROPOSITION 8 PROPONENTS, AND THEIR *AMICI* DO NOT ADDRESS SAME-SEX PARENTS AND THEREFORE DO NOT UNDERMINE THE CONSENSUS

The other studies cited by BLAG, the Proposition 8 Proponents, and their *amici* in no way undermine the consensus of social science research that children of same-sex couples fare just as well as those of opposite-sex couples. In continued apples-to-oranges fashion, they rely on studies analyzing, *inter alia*, stepparents, single parents, and adoptive parents—none of which address same-sex parents or their children—in order to make speculative statements about the wellbeing of children of same-sex parents. Such inappropriate, methodologically baseless comparisons provide no factual support or justification for DOMA or Proposition 8. Instead, the studies confirm that parental stability and higher parental socioeconomic resources are the key drivers of positive child outcomes.

Studies Regarding the Impact of Stepparents, Divorced Parents, or Single parents

BLAG, the Proposition 8 Proponents, and their *amici* rely on studies examining the impact of stepparents, divorced parents, and single parents on child wellbeing outcomes, and use these studies to

argue that two biological parents are necessary to positive child outcomes. See Brief for Matthew B. O'Brien as *Amicus Curiae* Supporting Petitioner–Hollingsworth at 17, No. 12-144, and Respondent–BLAG, No. 12-307 (U.S. Jan. 29, 2013); Brief for Social Science Professors as *Amicus Curiae*, Nos. 12-144, 12-307, at 5 (U.S. Jan. 29, 2013). These studies in no way examined same-sex parents or their impact on child wellbeing. See, e.g., Sara McLanahan & Gary Sandefur, *Growing Up with a Single Parent* 38 (1994) (comparing “disrupted” families with “intact” families, but nowhere discussing same-sex parents); Marilyn Coleman et al., *Reinvestigating Remarriage: Another Decade of Progress*, 62 *Journal of Marriage & Family* 1288 (2000) (comparing stepparents to non-divorced parents, but not addressing same-sex parents); Kristen Anderson Moore et al., *Marriage from a Child’s Perspective: How Does Family Structure Affect Children, and What Can We Do About It?*, *Child Trends Research Brief* 1-2, 6 (2002), <http://www.childtrends.org/files/marriagerb602.pdf> (comparing the wellbeing of children raised by stepparents and single parents to that of children raised by stable, two parent families); Mark V. Flinn et al., *Growth and Fluctuating Assymetry of Stepchildren*, 20 *Evolutionary Human Behavior* 465 (1999) (analyzing the wellbeing of children raised by stepfathers, but not addressing same-sex parents); Nicholas H. Wolfinger, *Understanding the Divorce Cycle: The Children of Divorce in Their Own Marriages* (2005) (analyzing the impact of divorce, but not addressing same-sex parents). Accordingly, they cannot be relied upon as scientific evidence regarding the effects of same-sex parenting.

Aside from not specifically addressing same-sex parents, the studies regarding stepparents and divorce indicate that child outcomes are, on average, not as positive because of the disruption caused by divorce or the introduction of a new parent into the family, but do not indicate that the source of the negative outcomes is related to the fact that the stepparent is not biologically related to the child. *See, e.g.*, Moore at 1 (“Divorce is linked to academic and behavior problems among children, including depression, antisocial behavior, impulsive/hyperactive behavior, and school behavior problems. Mental health problems linked to marital disruption have also been identified among young adults.”). Therefore, the argument that research regarding stepparents is relevant to same-sex parents because at least one of the same-sex parents is not the biological parent, and is therefore “step” is misplaced. In a planned, same-sex parent family, both parents have brought the child into the family and raised the child from infancy. Moreover, in many states, both parents in same-sex parent families are legal parents to the children.

Accordingly, all of the studies cited by BLAG, the Proposition 8 Proponents, and their *amici* analyzing the effects of single parents and stepparents are mischaracterized by them. The research on children in divorced, single parent, and stepparent families simply says nothing about the wellbeing of children raised by same-sex parents. As the district court determined based on the evidence introduced at trial in the *Perry* case, “[s]tudies comparing outcomes for children raised by married opposite-sex parents to children raised by single or divorced parents do not inform conclusions about outcomes for children raised by same-sex parents

in stable, long-term relationships.” 704 F. Supp. 2d at 981.

In fact, the authors of one of the principal studies relied on by BLAG—the Child Trends study—have publicly responded that their study focused on children being raised in families headed by single parents, stepparents, and married, opposite-sex parents—not same-sex parents. *See* Moore at Introductory Disclaimer. The Child Trends authors expressly disclaimed BLAG’s misuse of their study, explaining that “no conclusions can be drawn from this research about the wellbeing of children raised by same-sex parents or adoptive parents.” *Id.* *See also* Chris Johnson, *Anti-Gay Briefs ‘Mischaracterized’ Study*, *Washington Blade* (Jan. 25, 2013), <http://www.washingtonblade.com/2013/01/25/anti-gay-legal-briefs-mischaracterized-parenting-study>.

The Child Trends study concluded something entirely different than what was claimed by BLAG. The study concluded that “when researchers have compared marriage to cohabitation, they have found that marriage is associated with better outcomes for children.” Moore at 2. Extending this logic to the context of same-sex couples and their children, recognition of marriage rights of such couples could improve, not impair, the wellbeing of children being raised by currently unmarried same-sex parents. *See also* Wendy D. Manning & Kathleen A. Lamb, *Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families* 65 *Journal of Marriage & Family* 876 (2003) (noting that marriage provides enhanced socioeconomic resources to families, improving child wellbeing outcomes); Pamela J. Smock

& Wendy D. Manning, *Living Together Unmarried in the United States: Demographic Perspectives and Implications for Family Policy*, 26 *Law & Policy* 87, 94 (2004) (discussing the role of marriage in contributing to the stability of a family).

Studies Purporting to Examine the Effect of Two Biological Parents

The *amici* in support of DOMA and Proposition 8 cite studies purporting to show the superiority of biological parents over adoptive parents, see Brief for Social Science Professors at 14 n.6 (citing Brent Miller et al., *Comparisons of Adopted and Non-Adopted Adolescents in a Large, Nationally Representative Sample*, 71 *Child Development* 1458 (2000)), and a publication by an advocacy organization purporting to show problems for children conceived by donor sperm, see Brief for Coalition for the Protection of Marriage as *Amicus Curiae* Supporting Petitioner–Hollingsworth at 23, No. 12-144, and Respondent–BLAG, No. 12-307 (U.S. Jan. 29, 2013) (citing Institute for American Values (Elizabeth Marquardt, Norval D. Glenn, & Karen Clark, co-investigators), *My Daddy's Name is Donor: A New Study of Young Adults Conceived Through Sperm Donation* (2010)). As with the rest of their studies, these studies do not examine same-sex parents or their children. It is hard to see the relevance of these citations to the issue of marriage rights for same-sex couples given that both adoption and assisted reproduction are widely used by heterosexual couples, as reflected in the very sources cited in support of DOMA and Proposition 8.

In any case, there is no basis for the assertion that adoption or assisted reproduction leads to negative child outcomes. In fact, studies actually indicate that children raised in adoptive families since infancy or in families utilizing assisted reproduction techniques fare just as well as other children. *See also* Gartrell & Bos at 33-34 (showing that “adolescents who have been raised since birth in planned lesbian families demonstrate healthy psychological adjustment” and that they in fact “demonstrated higher levels of social, school/academic, and total competence than gender-matched normative samples of American teenagers”); Brent Miller et al., *Comparisons of Adopted and Non-Adopted Adolescents In A Large, Nationally Representative Sample*, 71 *Child Development* 1458 (2000) (finding little difference between adoptees and non-adoptees who live in two-parents families, and finding, to the extent there was any difference, that the difference occurs in children who were adopted later in their childhood). As put succinctly by the district court in *Perry*, “[t]he genetic [or biological] relationship between a parent and a child is not related to a child’s adjustment outcomes.” 704 F.Supp. 2d at 981.¹²

¹² The *amici* of BLAG and Proposition 8 Proponents cite to the assertion that children have a “right” to their biological parents because they allegedly fare better with such parents. Margaret Somerville, *Children’s Human Rights to Natural Biological Origins and Family Structure*, 1 *International Journal of Jurisprudence of the Family* 35 (2010). However, when this same opinion was offered to the Iowa Supreme Court in its evaluation of marriage rights for same-sex couples, it was dismissed as being “largely unsupported by reliable scientific studies.” *Varnum v. Brien*, 763 N.W.2d 862, 899 (Iowa 2009).

Studies Regarding Gender Roles in Opposite-Sex Family

The *amici* also rely on a number of studies that examine the parental roles of mothers and fathers within the context of opposite-sex parent families and claim that these studies demonstrate that children's wellbeing depends on having both a male and female parent. See Brief for Coalition for Protection of Marriage at 33; Brief for Social Science Professors at 7.¹³ But these studies do not support this suggestion and reliance on them is misplaced for multiple reasons.

First, like the other studies cited by BLAG, the Proposition 8 Proponents, and their *amici*, these studies do not examine the parenting and disciplinary dynamics of same-sex parents. Without any social science evidence to support their conclusion, the *amici* ask the Court to deduce that a child raised by two gay husbands would not receive the necessary neural development or improvement in emotional and communicative skills. No such conclusion is proper based on these or any studies. Second, BLAG, the Proposition 8 Proponents, and their *amici* ignore the fact that the research regarding different parenting

¹³ Citing C.A. Nelson & M. Bosquet, *Neurobiology of Fetal and Infant Development: Implications for Infant Mental Health*, in *Handbook of Infant Mental Health* 37-59 (C.H. Zeanah Jr. ed., 2d ed. 2000); Eleanor Maccoby, *The Two Sexes* 266-67 (1998); Paul R. Amato & Fernando Rivera, *Paternal Involvement and Children's Behavior Problems*, 61 *Journal of Marriage & Family* 375 (1999); Shmuel Shulman & Moshe M. Klein, *Distinctive Role of the Father in Adolescent Separation-Individuation*, 62 *New Directions for Child & Adolescent Development* 41, 53 (1993).

roles and styles indicates that those roles are relative and nothing in the research indicates that same-sex couples are not able to provide such relative parenting dynamics. See David Popenoe, *Life Without Father: Compelling New Evidence that Fatherhood & Marriage Are Indispensable for the Good of Children & Society* 147 (1996) (noting that among same-sex parents, one partner commonly fills the “male-instrumental role while the other fills the female-expressive role” in rearing their children). Third, the research also indicates that there is a range of parenting styles, that no couples parent identically, and that children do not need their parents to adopt particular parenting styles to be well adjusted. See Paul R. Amato & Frieda Fowler, *Parenting Practices, Child Adjustment, and Family Diversity*, 64 *Journal of Marriage & Family* 703, 714 (2002) (“When parents spend time with children, help with homework, talk about problems, provide encouragement, and show affection, children do well.”).

Finally, arguments based on rigid gender roles should be rejected as this Court has declined to rely upon “outdated misconceptions” and “loose-fitting characterizations” regarding gender. See *Craig v. Boren*, 429 U.S. 190, 198-99 (1976); see also *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (“[W]e are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group[.]”). As the district court in *Perry* concluded after examining the social science evidence presented, including the testimony of Dr. Lamb, “[c]hildren do not need to be raised by a male parent and a female parent to be well-adjusted, and having both a male and a female parent

does not increase the likelihood that a child will be well-adjusted.” 704 F. Supp. 2d at 981.

Nor do the studies relied on by the *amici* that examine the role of absentee fathers, *see, e.g.*, Popenoe at 146, establish that, within the context of same-sex parenting, fathers are necessary to the child’s wellbeing. In fact, the research regarding the negative impact of absentee fathers, such as David Popenoe’s, has nothing to do with the unique contributions of fathers, but rather with the loss of a parental relationship. *Id.* at 139 (“Much of what fathers contribute to child development, of course, is simply the result of being a second adult in the home. Other things being equal, two adults are far better than one in raising children. As the distinguished developmental psychologist Urie Bronfenbrenner has noted, the quality of interaction between principal caregiver and child depends heavily on the availability and involvement of another adult, a *third party* who assists, encourages, spells off, gives status to, and expresses admiration and affection for the person caring for and engaging in joint activity with the child.” (internal quotations omitted)).

In sum, the studies relied on by BLAG, the Proposition 8 Proponents, and their *amici* examine child outcomes within the context of opposite-sex relationships, and do not address the impact of same-sex parents on child wellbeing. These studies do not undermine the social science consensus, supported by the most reliable studies available, that children raised by same-sex parents fare just as well as children raised

by opposite-sex parents across a broad spectrum of indicators.¹⁴

CONCLUSION

The social science consensus is both conclusive and clear: children fare just as well when they are raised by same-sex parents as when they are raised by opposite-sex parents. This consensus holds true across a wide range of child outcome indicators and is supported by numerous nationally representative studies. Accordingly, assuming that either DOMA or Proposition 8 has any effect on whether children are raised by opposite-sex or same-sex parents, there is no basis to prefer opposite-sex parents over same-sex parents and neither DOMA nor Proposition 8 is justified. The research supports the conclusion that extension of marriage rights to same-sex couples has the potential to improve child wellbeing insofar as the institution of marriage may provide social and legal support to families and enhances family stability, key drivers of positive child outcomes. The Regnerus study and other studies relied on by BLAG, the Proposition 8 Proponents, and their *amici* provide no basis for their arguments, because they do not directly examine the wellbeing of children raised by same-sex parents.

¹⁴ A handful of the studies cited by BLAG, the Proposition 8 Proponents, and their *amici* appear based on their titles to study same-sex parents and their children. They do not. For example, the Brief for Social Science Professors cites to a sociologist who critiques marriage rights for same-sex couples, but that critique is not grounded in scientific evidence, but is simply an opinion essay. Norval D. Glenn, *The Struggle for Same-Sex Marriage*, 41 *Society* 27 (2004).

These studies therefore do not undermine the consensus from the social science research and do not establish a “common sense” basis for DOMA or Proposition 8.

The decisions of both the United States Courts of Appeals for the Second and Ninth Circuits should be affirmed.

Respectfully submitted,

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